

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

HIRBOD H. ROWSHAN DDS, P.S.,  
individually and on behalf of all others similarly  
situated,

Plaintiff,

v.

OHIO SECURITY INSURANCE COMPANY,  
Defendant.

No.

COMPLAINT—CLASS ACTION

JURY DEMAND

**I. INTRODUCTION**

Plaintiff, Hirbod H. Rowshan, DDS, P.S., d/b/a Center for Oral and Maxillofacial Surgery and Implantology (“Plaintiff” or “Rowshan”), individually and on behalf of all other similarly situated members of the defined national class and Washington State subclasses (the “Class Members”), by and through the undersigned attorneys, brings this class action against Defendant Ohio Security Insurance Company (“Defendant” or “Ohio Security”) and alleges as follows based on personal knowledge and information and belief:

## II. JURISDICTION AND VENUE

1  
2 1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness  
3 Act of 2005, 28 U.S.C. § 1332(d), because at least one member of the proposed Class and  
4 Washington subclass is a citizen of a state different from that of Defendant, the proposed Class  
5 and subclass each consist of more than 100 class members, and the aggregate amount in  
6 controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiff's state  
7 law claims under 28 U.S.C. § 1367.  
8

9 2. This Court has personal jurisdiction over Defendant because Defendant is  
10 registered to do business in Washington, has sufficient minimum contacts in Washington, and  
11 otherwise intentionally avails itself of the markets within Washington through its business  
12 activities, such that the exercise of jurisdiction by this Court is proper. Moreover, the claims of  
13 Plaintiff and all of the Washington subclass members in this case arise out of and directly relate  
14 to Defendant's contacts with Washington.  
15

16 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the  
17 Court has personal jurisdiction over Defendant, a substantial portion the alleged wrongdoing  
18 occurred in this District and the state of Washington, and Defendant has sufficient contacts with  
19 this District and the state of Washington.  
20

21 4. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.  
22 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at  
23 issue in this Complaint arose in this District. Plaintiff's business is located in Bellevue, King  
24 County. This action is therefore appropriately filed in the Seattle Division because a substantial  
25 portion of the events giving rise to this lawsuit arose in King County.  
26

**III. PARTIES**

5. Plaintiff, Hirbod H. Rowshan, DDS P.S., owns and operates a dental business, offering services of oral and maxillofacial surgery and implantology. Dr. Rowshan's business is located at 12715 Bel-Red Road, Suite 130, Bellevue, Washington 98005.

6. Defendant Ohio Security Insurance Company is an insurance carrier incorporated and domiciled in New Hampshire, with its principal place of business in Massachusetts.

7. Defendant Ohio Security is authorized to write, sell, and issue business insurance policies in 49 states. Defendant conducted business within Washington and these states by selling and issuing business insurance policies to policyholders, including Plaintiff.

**IV. NATURE OF THE CASE**

8. Due to COVID-19 and a state-ordered mandated closure, Plaintiff cannot provide dental services. Plaintiff intended to rely on its business insurance to maintain business income in case of an insured loss. This lawsuit is filed to ensure that Plaintiff and other similarly-situated policyholders receive the insurance benefits to which they are entitled and for which they paid.

9. Defendant Ohio Security issued one or more insurance policies to Plaintiff, including Commercial Protector Policy with Business Owners Coverage Form and related endorsements, insuring Plaintiff's property and business and other coverages, with effective dates of October 1, 2019 to October 1, 2020.

10. Plaintiff's business property includes property owned and/or leased by Plaintiff and used for general business purposes for the specific purpose of dental and other business activities.

11. Defendant Ohio Security's insurance policy issued to Plaintiff promises to pay Plaintiff for "direct physical loss of or physical damage to" covered property.

1           12. Defendant Ohio Security's insurance policy issued to Plaintiff includes Business  
2 Income Coverage, Extra Expense Coverage, Extended Business Income Coverage and Civil  
3 Authority Coverage.

4           13. Plaintiff paid all premiums for the coverage when due.

5           14. On or about January 2020, the United States of America saw its first cases of  
6 persons infected by COVID-19, which has been designated a worldwide pandemic.  
7

8           15. On February 29, 2020, Washington Governor Jay Inslee issued Proclamation 20-  
9 05, declaring a State of Emergency for all counties in the State of Washington as the result of the  
10 COVID-19 outbreak. Thereafter, he issued a series of certain proclamations and orders affecting  
11 many persons and businesses in Washington, whether infected with COVID-19 or not, requiring  
12 certain public health precautions.  
13

14           16. By order of Governor Inslee, dentists including Plaintiff were prohibited from  
15 practicing dental services but for urgent and emergency procedures.

16           17. Governor Inslee's "PROCLAMATION BY THE GOVERNOR AMENDING  
17 PROCLAMATION 20-05: 20-24 Restrictions on Non-Urgent Medical Procedures," dated March  
18 19, 2020, also provides, in part:

19           WHEREAS, the health care person protective equipment supply chain in  
20 Washington State has been severely disrupted by the significant increased use of  
21 such equipment worldwide, such that there are now critical shortages of this  
22 equipment for health care workers. To curtail the spread of the COVID-19  
23 pandemic in Washington State and to protect our health care workers as they  
24 provide health care services, it is necessary to immediately prohibit all hospitals,  
25 ambulatory surgery centers, and dental orthodontic, and endodontic offices in  
26 Washington State from providing health care services, procedures and surgeries  
that require personal protective equipment, which if delayed, are not anticipated  
to cause harm to the patient within the next three months.

1           18.     On March 23, 2020, Governor Inslee issued Proclamation 20-25, “Stay Home—  
2 State Healthy.” The proclamation requires that “[a]ll people in Washington State [ ] immediately  
3 cease leaving their home or place of residence except: (1) to conduct or participate in essential  
4 activities, and/or (2) for employment in essential business activities.” The proclamation prohibits  
5 “all non-essential businesses in Washington State from conducting business, within the  
6 limitations provided herein.”  
7

8           19.     Governor Inslee has extended Proclamation 20-25 until May 31, 2020.

9           20.     By order of Governor Inslee, dentists including Plaintiff have been prohibited  
10 from providing services but for urgent and emergency procedures.

11           21.     No COVID-19 virus has been detected on Plaintiff’s business premises.

12           22.     Plaintiff’s property has sustained direct physical loss and/or damage related to  
13 COVID-19 and/or the proclamations and orders.  
14

15           23.     Plaintiff’s property will continue to sustain direct physical loss or damage covered  
16 by the Ohio Security policy or policies, including but not limited to business interruption, extra  
17 expense, interruption by civil authority, and other expenses.

18           24.     Plaintiff’s property cannot be used for its intended purposes.

19           25.     As a result of the above, Plaintiff has experienced and will experience loss  
20 covered by the Ohio Security policy or policies.  
21

22           26.     By letter dated April 6, 2020, Defendant sent a letter to Plaintiff advising that its  
23 loss would not likely be covered under the Ohio Security policy. Upon information and belief,  
24 Defendant intends to deny, has denied and/or will deny coverage to Plaintiff and to other  
25 similarly situated policyholders.  
26

V. CLASS ACTION ALLEGATIONS

27. This matter is brought by Plaintiff on behalf of itself and those similarly situated, under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

28. The Classes and Subclasses that Plaintiff seeks to represent are defined as:

A. ***Business Income Breach of Contract Class:*** All persons and entities in the United States insured under an Ohio Security policy with Business Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities and whose Business Income claim has been denied by Ohio Security.

B. ***Business Income Coverage Breach of Contract Washington Subclass:*** All persons and entities in the State of Washington insured under an Ohio Security policy with Business Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil authorities and whose Business Income claim has been denied by Ohio Security.

C. ***Business Income Declaratory Relief Class:*** All persons and entities in the United States insured under an Ohio Security policy with Business Income Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.

D. ***Business Income Coverage Declaratory Relief Washington Subclass:*** All persons and entities in the State of Washington insured under an Ohio Security policy with Business Income Coverage who suffered a suspension of their business at the

1 covered premises related to COVID-19 and/or orders issued by Governor Inslee, and/or  
2 other civil authorities.

3 E. ***Extended Business Income Breach of Contract Class:*** All persons and  
4 entities in the United States insured under an Ohio Security policy with Extended  
5 Business Income Coverage who suffered a suspension of their business at the covered  
6 premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors,  
7 and/or other civil authorities and whose Extended Business Income claim has been  
8 denied by Ohio Security.  
9

10 F. ***Extended Business Income Breach of Contract Washington Subclass:***  
11 All persons and entities in the State of Washington insured under an Ohio Security policy  
12 with Extended Business Income Coverage who suffered a suspension of their business at  
13 the covered premises related to COVID-19 and/or orders issued by Governor Inslee,  
14 and/or other civil authorities and whose Extended Business Income claim has been  
15 denied by Ohio Security.  
16

17 G. ***Extended Business Income Declaratory Relief Class:*** All persons and  
18 entities in the United States insured under an Ohio Security policy with Extended  
19 Business Income Coverage who suffered a suspension of their business at the covered  
20 premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors,  
21 and/or other civil authorities.  
22

23 H. ***Extended Business Income Declaratory Relief Washington Subclass:*** All  
24 persons and entities in the State of Washington insured under an Ohio Security policy  
25 with Extended Business Income coverage who suffered a suspension of their business at  
26

1 the covered premises related to COVID-19 and/or orders issued by Governor Inslee,  
2 and/or other civil authorities.

3 I. ***Extra Expense Breach of Contract Class:*** All persons and entities in the  
4 United States insured under an Ohio Security policy with Extra Expense Coverage who  
5 sought to minimize losses from the suspension of their business at the covered premises  
6 in connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,  
7 and/or other civil authorities and whose Extra Expense claim has been denied by Ohio  
8 Security.  
9

10 J. ***Extra Expense Breach of Contract Washington Subclass:*** All persons  
11 and entities in the State of Washington insured under an Ohio Security policy with Extra  
12 Expense Coverage who sought to minimize losses from the suspension of their business  
13 at the covered premises in connection with COVID-19 and/or orders issued by Governor  
14 Inslee, and/or other civil authorities and whose Extra Expense claim has been denied by  
15 Ohio Security.  
16

17 K. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the  
18 United States insured under an Ohio Security policy with Extra Expense Coverage who  
19 sought to minimize losses from the suspension of their business at the covered premises  
20 in connection with COVID-19 and/or orders issued by Governor Inslee, other Governors,  
21 and/or other civil authorities.  
22

23 L. ***Extra Expense Declaratory Relief Washington Subclass:*** All persons and  
24 entities in the State of Washington insured under an Ohio Security policy with Extra  
25 Expense Coverage who sought to minimize losses from the suspension of their business  
26



1 at the covered premises in connection with COVID-19 and/or orders issued by Governor  
2 Inslee, and/or other civil authorities.

3 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the  
4 United States insured under an Ohio Security policy with Civil Authority Coverage who  
5 suffered a suspension of their business and/or extra expense at the covered premises  
6 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or  
7 other civil authorities and whose Civil Authority claim has been denied by Ohio Security.  
8

9 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons  
10 and entities in the State of Washington insured under an Ohio Security policy with Civil  
11 Authority coverage who suffered a suspension of their business and/or extra expense at  
12 the covered premises related to COVID-19 and/or orders issued by Governor Inslee,  
13 and/or other civil authorities and whose Civil Authority claim has been denied by Ohio  
14 Security.  
15

16 O. ***Civil Authority Declaratory Relief Class:*** All persons and entities in the  
17 United States insured under an Ohio Security policy with Civil Authority Coverage who  
18 suffered a suspension of their business at the covered premises related to COVID-19  
19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.  
20

21 P. ***Civil Authority Declaratory Relief Washington Subclass:*** All persons and  
22 entities in the State of Washington insured under an Ohio Security policy with Civil  
23 Authority Coverage who suffered a suspension of their business at the covered premises  
24 related to COVID-19 and/or orders issued by Governor Inslee, and/or other civil  
25 authorities.  
26

1           29. Excluded from the Classes and Subclasses are Defendant's officers, directors, and  
2 employees; the judicial officers and associated court staff assigned to this case; and the  
3 immediate family members of such officers and staff. Plaintiff reserves the right to amend the  
4 Class definitions based on information obtained in discovery.

5           30. This action may properly be maintained on behalf of each proposed Class under  
6 the criteria of Rule 23 of the Federal Rules of Civil Procedure.

7           31. **Numerosity:** The members of the Class are so numerous that joinder of all  
8 members would be impractical. Plaintiff is informed and believes that each proposed Class and  
9 Subclass contains hundreds of members. The precise number of class members can be  
10 ascertained through discovery, which will include Defendant's records of policyholders.

11           32. **Commonality and Predominance:** Common questions of law and fact  
12 predominate over any questions affecting only individual members of the Class. Common  
13 questions include, but are not limited to, the following:  
14

15           A. Whether the class members suffered covered losses based on common  
16 policies issued to members of the Class and Subclass;

17           B. Whether Ohio Security acted in a manner common to the Class and  
18 Subclass by wrongfully denying claims for coverage relating to COVID-19 and/or orders  
19 issued by Governor Inslee, other Governors, and/or other civil authorities;  
20

21           C. Whether Business Income Coverage in Ohio Security's policies of  
22 insurance applies to a suspension of business relating to COVID-19 and/or orders issued  
23 by Governor Inslee, other Governors, and/or other civil authorities;  
24  
25  
26

1 D. Whether Extended Business Income Coverage in Ohio Security's policies  
2 of insurance applies to a suspension of business relating to COVID-19 and/or orders  
3 issued by Governor Inslee, other Governors, and/or other civil authorities;

4 E. Whether Extra Expense Coverage in Ohio Security's policies of insurance  
5 applies to efforts to minimize a loss at the covered premises relating to COVID-19 and/or  
6 orders issued by Governor Inslee, other Governors, and/or other civil authorities;

7 F. Whether Civil Authority Coverage in Ohio Security's policies of  
8 insurance applies to a suspension of business relating to COVID-19 and/or orders issued  
9 by Governor Inslee, other Governors, and/or civil authorities;

10 G. Whether Ohio Security has breached its contracts of insurance through a  
11 blanket denial of all claims based on business interruption, income loss or closures  
12 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or  
13 other civil authorities;

14 H. Whether, because of Defendant's conduct, Plaintiff and the class members  
15 have suffered damages; and if so, the appropriate amount thereof; and

16 I. Whether, because of Defendant's conduct, Plaintiff and the class members  
17 are entitled to equitable and declaratory relief, and if so, the nature of such relief.

18 33. **Typicality:** Plaintiff's claims are typical of the claims of the members of the  
19 classes. Plaintiff and all the members of the classes have been injured by the same wrongful  
20 practices of Defendant. Plaintiff's claims arise from the same practices and course of conduct  
21 that give rise to the claims of the members of the Class and are based on the same legal theories.

22 34. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of  
23 the classes and has retained class counsel who are experienced and qualified in prosecuting class  
24

1 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the  
2 Class.

3       **35. Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying**  
4 **Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks  
5 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are  
6 common to all members of the class. The prosecution of separate actions by individual members  
7 of the classes would risk inconsistent or varying interpretations of those policy terms and create  
8 inconsistent standards of conduct for Defendant. The policy interpretations sought by Plaintiff  
9 could also impair the ability of absent class members to protect their interests.  
10

11       **36. Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**  
12 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members  
13 of the proposed class making injunctive relief and declaratory relief appropriate on a classwide  
14 basis.  
15

16       **37. Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is  
17 superior to all other available methods of the fair and efficient adjudication of this lawsuit. While  
18 the aggregate damages sustained by the classes are likely to be in the millions of dollars, the  
19 individual damages incurred by each class member may be too small to warrant the expense of  
20 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions  
21 and the court system would be unduly burdened by individual litigation of such cases. A class  
22 action would result in a unified adjudication, with the benefits of economies of scale and  
23 supervision by a single court.  
24  
25  
26

VI. CAUSES OF ACTION

**Count One—Declaratory Judgment**

*(Brought on behalf of the Business Income Coverage Declaratory Relief Class, Business Income Coverage Declaratory Relief Washington Subclass, Extended Business Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority Declaratory Relief Washington Subclass)*

38. Previous paragraphs alleged are incorporated herein.

39. This is a cause of action for declaratory judgment pursuant to the Declaratory Judgment Act, codified at 28 U.S.C. § 2201.

40. Plaintiff brings this cause of action on behalf of the Business Income Coverage Declaratory Relief Class, Business Income Coverage Declaratory Relief Washington Subclass, Extended Business Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief Class, Extra Expense Declaratory Relief Washington Subclass, Civil Authority Declaratory Relief Class, and Civil Authority Declaratory Relief Washington Subclass.

41. Plaintiff seeks a declaratory judgment declaring that Plaintiff and class members' losses and expenses resulting from the interruption of their business are covered by the Policy.

42. Plaintiff seeks a declaratory judgment declaring that Ohio Security is responsible for timely and fully paying all such claims.

**Count Two—Breach of Contract**

*(Brought on behalf of the Business Income Coverage Breach of Contract Class, Business Income Coverage Breach of Contract Washington Subclass, Extended Business Income Breach of Contract Class, Extended Business Income Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach of Contract Washington Subclass, Civil Authority Breach of Contract Class, and Civil Authority Breach of Contract Washington Subclass)*

1           43.     Previous paragraphs alleged are incorporated herein.

2           44.     Plaintiff brings this cause of action on behalf of the Business Income Coverage  
3 Breach of Contract Class, Business Income Coverage Breach of Contract Washington Subclass,  
4 Extended Business Income Breach of Contract Class, Extended Business Income Breach of  
5 Contract Washington Subclass, Extra Expense Breach of Contract Class, Extra Expense Breach  
6 of Contract Washington Subclass, Civil Authority Breach of Contract Class and Civil Authority  
7 Breach of Contract Washington Subclass.  
8

9           45.     The Policy is a contract under which Plaintiff and the class paid premiums to  
10 Ohio Security in exchange for Ohio Security's promise to pay plaintiff and the class for all  
11 claims covered by the Policy.  
12

13           46.     Plaintiff has paid its insurance premiums.

14           47.     Defendant sent a letter to Plaintiff advising that its loss would not likely be  
15 covered under the Ohio Security policy. On information and belief, Ohio Security intends to  
16 deny, has denied, and will continue to deny coverage for Plaintiff and other similarly situated  
17 policyholders.  
18

19           48.     Denying coverage for the claim is a breach of the insurance contract.

20           49.     Plaintiff is harmed by the breach of the insurance contract by Ohio Security.

## 21                               **VII. PRAYER FOR RELIEF**

22           1.     A declaratory judgment that the policy or policies cover Plaintiff's losses and  
23 expenses resulting from the interruption of the Plaintiff's business related to COVID-19 and/or  
24 orders issued by Governor Inslee, other Governors, and/or other authorities.

25           2.     A declaratory judgment that the defendant is responsible for timely and fully  
26 paying all such losses.

3. Damages.
4. Pre- and post-judgment interest at the highest allowable rate.
5. Reasonable attorney fees and costs.
6. Such further and other relief as the Court shall deem appropriate.

### VIII. JURY DEMAND

Plaintiff demands a jury trial on all claims so triable.

DATED this 14th day of May, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Amy Williams-Derry

By: s/ Lynn L. Sarko

By: s/ Ian S. Birk

By: s/ Gretchen Freeman Cappio

By: s/ Irene M. Hecht

By: s/ Maureen Falecki

By: s/ Nathan L. Nanfelt

Amy Williams-Derry, WSBA #28711

Lynn L. Sarko, WSBA #16569

Ian S. Birk, WSBA #31431

Gretchen Freeman Cappio, WSBA #29576

Irene M. Hecht, WSBA #11063

Maureen Falecki, WSBA #18569

Nathan Nanfelt, WSBA #45273

1201 Third Avenue, Suite 3200

Seattle, WA 98101

Telephone: (206) 623-1900

Fax: (206) 623-3384

Email: [awilliams-derry@kellerrohrback.com](mailto:awilliams-derry@kellerrohrback.com)

Email: [lsarko@kellerrohrback.com](mailto:lsarko@kellerrohrback.com)

Email: [ibirk@kellerrohrback.com](mailto:ibirk@kellerrohrback.com)

Email: [gcappio@kellerrohrback.com](mailto:gcappio@kellerrohrback.com)

Email: [ihecht@kellerrohrback.com](mailto:ihecht@kellerrohrback.com)

Email: [mfalecki@kellerrohrback.com](mailto:mfalecki@kellerrohrback.com)

Email: [nnanfelt@kellerrohrback.com](mailto:nnanfelt@kellerrohrback.com)

By: s/ Alison Chase

Alison Chase, *pro hac vice* forthcoming

801 Garden Street, Suite 301

Santa Barbara, CA 93101

Telephone: (805) 456-1496

Fax: (805) 456-1497

Email: achase@kellerrohrback.com

*Attorneys for Plaintiff*

4810-9168-0956, v. 1